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July 27, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 04-33 – Petition of Verizon New England Inc. for Arbitration

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced docket is the Motion of Verizon Massachusetts for Partial Reconsideration of Letter Order.

Thank you for your attention in this matter.

Sincerely,

Bruce P. Beausejour

Bruce P. Beausejour

Enclosure
cc: Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England Inc. for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the *Triennial Review Order*	)	**D.T.E. 04-33**

MOTION OF VERIZON MASSACHUSETTS FOR PARTIAL RECONSIDERATION OF LETTER ORDER

Pursuant to 220 C.M.R. § 1.11(10), Verizon Massachusetts ("Verizon MA") respectfully requests that the Department reconsider one aspect of its order issued in the above matter by memorandum dated July 7, 2006 ("Letter Order"). Specifically, in part III.B.3 of the Letter Order, at 7, the Department correctly rejected a proposal by RCN to include language in Verizon DTE Tariff No. 17 to specify that entrance facilities formerly available as UNEs under Section 251(c)(3) of the Act "remain available for interconnection purposes" under Section 251(c)(2). The Department instead approved Verizon MA's compromise proposal, consistent with the terms of the Compliance Amendment approved in the order, stating that discontinuance of the entrance facility UNE "does not alter" the parties' rights and responsibilities as to interconnection facilities under Section 251(c)(2). The Department went on, however, to state that:

> Although we do not adopt RCN's preferred language, we note, for purposes of avoiding future disputes between Verizon and CLECs, that our adoption of Verizon's revised language, as well as our findings in the Arbitration Orders, reflects our determination that, although entrance facilities, including dedicated transport, are no longer available as UNEs, they remain available to CLECs at TELRIC rates for interconnection under § 251(c)(2).

This finding should be reconsidered and vacated for a number of reasons. First, it is factually mistaken; neither Verizon MA's revised language nor any of the Arbitration Orders issued in this proceeding reflects any determination that entrance facilities are available under Section 251(c)(2) or at TELRIC rates. Second, the finding is inconsistent with the Department's holding in its Arbitration Order of July 14, 2005, that the parties' rights and responsibilities regarding interconnection under Section 251(c)(2) are not appropriately addressed in this proceeding. In short, the Department mistakenly made a determination on a matter that was never at issue in the case but had expressly excluded it from the case. If the Department is now going to address issues relating to interconnection via entrance facilities – which its does not have to do because the tariff proposed by Verizon MA conforms strictly with the comparable terms approved for interconnection agreements – it must provide notice of that fact and give Verizon MA a full and fair opportunity to present its case. Verizon MA disputes that it has any obligation whatsoever to provide entrance facilities to discharge its obligation under Section 251(c)(2) of the Telecommunications Act and certainly does not have to provide at TELRIC rates any facilities that it voluntarily offers.

STANDARD OF REVIEW

The Department's standard of review for reconsideration of its decisions is well-established. A motion for reconsideration "should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered." *Boston Edison Company*, D.P.U. 90-270-A, at 2-3 (1991); *Western Massachusetts Electric Company*, D.P.U. 85-270-C, at 12-13 (1987). It should not attempt to reargue issues considered and decided in the main case. *Commonwealth Electric Company*, D.P.U. 92-3C-1A, at 3-6 (1995); *Boston Edison Company*, D.P.U. 90-270-A, at 3 (1991). Rather,

> [r]econsideration of previously decided issues is granted only when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision made after review and deliberation. *Id.*

Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. *Massachusetts Electric Company*, D.P.U. 90-261-B, at 7 (1991); *New England Telephone and Telegraph Company*, D.P.U. 86-33-J, at 2 (1989); *Boston Edison Company*, D.P.U. 1350-A, at 5 (1983). It is also appropriate where parties have not been "given notice of the issues involved and accorded a reasonable opportunity to prepare and present evidence and argument" on an issue decided by the Department. *Re: Petition of CTC Communications Corp.*, D.T.E. 98-18-A, at 2, 9 (1998).

ARGUMENT

I. The Finding In The Letter Order That Verizon MA's Revised Tariff Language And Prior Department Orders In This Case Reflect a Determination That Entrance Facilities Remain Available To CLECs Under Section 251(c)(2) Is Mistaken.

As a factual statement, the Department's finding in the Letter Order is simply incorrect. Neither Verizon MA's revised language regarding entrance facilities nor any of the Department's orders in this proceeding reflects a determination that entrance facilities are available under Section 251(c)(2) at TELRIC or any other rates. The new tariff language proposed by Verizon MA and approved by the Department provides as follows:

> The discontinuation of such unbundled entrance facilities does not alter either the Telephone Company's or the TC's pre-existing rights and responsibilities concerning interconnection facilities under section 251(c)(2) of the Act.

See Reply of Verizon Massachusetts in Support of its Compliance Tariff, at 3. This language makes no statement as to the availability or unavailability of interconnection facilities, nor does it purport to state that "entrance facilities" qualify as "interconnection facilities." Rather, it says

only that whatever rights and responsibilities the parties may have with respect to interconnection facilities do not change as a result of the elimination of unbundled access to entrance facilities.

Likewise, no finding in any Department order in this proceeding concludes that entrance facilities are available to CLECs for interconnection under Section 251(c)(2) at TELRIC rates or otherwise. To the contrary, as discussed below, the Department's only finding on this issue is that it should *not* be litigated in this case. Thus, the Department's conclusion – that entrance facilities fall within the interconnection obligations imposed on Verizon MA by Section 251(c)(2) and are subject to TELRIC pricing – rests solely on mistaken facts and is unsupported by the actual facts or any legal analysis. It should be vacated.

II. The Finding In The Letter Order Concerning Entrance Facilities Is Contrary to and Inconsistent With The Department's Holding In The Arbitration Order That Proposed Changes Regarding Interconnection Rights Fall Outside The Scope Of This Proceeding.

As Verizon MA noted in its Reply in Support of its Compliance Tariff, CLECs had argued in the main case that the Interconnection Agreement Amendment should reflect that interconnection facilities established for transmission and routing of telephone exchange and exchange access services are available to CLECs at TELRIC pricing. *See* Arbitration Order, at 223. The Department properly rejected the CLECs' proposal, in the following analysis:

> In the Triennial Review Order at ¶366, and the Triennial Review Remand Order at ¶ 140, the FCC stated that its finding of non-impairment for entrance facilities did not alter the FCC's prior determinations concerning interconnection facilities. The FCC made no findings, clarifications, or statements in the Triennial Review Order or Triennial Review Remand Order that changed the parties' pre-existing rights and responsibilities concerning interconnection facilities. ***As no change resulted from the Triennial Review Order or Triennial Review Remand Order, it is unnecessary to litigate any change in language in this proceeding, and it is unnecessary for the parties to amend their agreements with respect to interconnection facilities.***

Id., at 224 (emphasis added). The Department thus refused to rule on the CLECs' attempt to litigate in this proceeding their proposed language regarding the parties' rights and responsibilities concerning interconnection, because the FCC had made no changes in those rights or responsibilities in the *TRO* or the *TRRO*.[1] That decision follows from and is consistent with the Department's broader holding that "[T]he scope of this proceeding is limited only to arbitration of terms that are necessary to implement the unbundling rules promulgated by the Triennial Review Order and the Triennial Review Remand Order...." Arbitration Order at 53.[2]

The finding in the Letter Order that entrance facilities remain available to CLECs as part of Verizon MA's obligation to allow interconnection under Section 251(c)(2) is a holding concerning the parties' rights and responsibilities with respect to interconnection, which the Department expressly held was not to be litigated in this proceeding and falls outside the scope of the case. That aspect of the Letter Order contradicts and is inconsistent with the Arbitration Order and should therefore be vacated.

Moreover, the Department's decision not to address issues regarding interconnection in this proceeding is not now open to debate. The parties were free to seek reconsideration of the Arbitration Order and did so. Only one party, AT&T, sought reconsideration of the Department's decision to exclude all issues associated with interconnection under Section 251(c)(2) from the case. *See* Partial Withdrawal of Motion for Reconsideration of AT&T Communications of New England, Inc., and Teleport Communications-Boston dated August 24, 2005, at 12-13. AT&T argued that the Department erred by excluding the issue and urged the

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1 Indeed, in its comments on Verizon MA's tariff, RCN even concedes that neither the *TRO* nor the *TRRO* purports to establish new rules regarding CLECs' rights to obtain interconnection under Section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. *See* RCN Comments, at 7.

2 *See also* Order on Compliance dated May 5, 2006, at 4-5 ("In the Arbitration Order, we arbitrated only those terms necessary to implement the new unbundling rules in the Triennial Review Order and the Triennial Review Remand Order.")

Department to accept its proposed contract language relating to entrance facilities. However, before the Department ruled on the motion, AT&T withdrew that part of its motion concerning interconnection. *See* Partial Withdrawal of Motion for Reconsideration of AT&T Communications of New England, Inc., ACC Corporation and Teleport Communications-Boston dated October 7, 2005. The Department did not, therefore, decide the issue, and its earlier decision that issues relating to the right and obligations of parties regarding interconnection under Section 251(c)(2) would not be heard or addressed in the case was not disturbed.

RCN's effort to insert favorable language in the tariff is nothing more than a collateral attack on the Department's finding in the Arbitration Order,[3] and an effort to seriously prejudice Verizon MA's rights. The Department should not condone and reward such an attack in its findings in the Letter Order. As the Department held in its Order on Compliance, at 12, where a party fails to move for reconsideration of an issue, "we find that it is inappropriate to consider new arguments opposing our determinations during the compliance phase of the proceeding." Accordingly, the Department should vacate the finding in the Letter Order.

Finally, because the Department had already ruled that interconnection rights and responsibilities would not be litigated in this proceeding and because that ruling was not subject to a proper motion for reconsideration, Verizon MA reasonably relied on that ruling in responding to RCN's arguments with respect to the compliance tariff filing and refrained from briefing the merits to demonstrate that entrance facilities are not available under Section 251(c)(2). At a minimum then, before the Department made use of the tariff compliance filing as a vehicle to reverse its prior ruling and address the parties' interconnection rights and duties, it

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[3] Indeed, the entire second half of RCN's Comments on Verizon MA's Compliance Tariff Filing (RCN Comments"), at 6-11, purports to respond to the arguments Verizon MA made in opposition to AT&T's motion for reconsideration on this issue back in September of 2005, before that motion was withdrawn. By addressing the issue raised by RCN almost a year after the deadline for motions to reconsider the Arbitration Order, the Letter Order only encourages disregard of the Department's rules and procedures.

was incumbent on the Department to provide notice of such to the parties, to allow a reasonable opportunity to brief the issue and present argument. The Department simply is not at liberty to decide an issue at the compliance stage it clearly and unambiguously asserted would not be addressed in the case. If the Department now feels that the matter should be addressed,[4] it must give notice that it will do so and provide Verizon MA with an opportunity to address the issue either through comments or record evidence.

In those comments or evidence, Verizon MA would establish that RCN's claims – which the Department appears to accept in the Letter Order – are wrong and based on misrepresentations and clearly erroneous interpretation of FCC rulings. Entrance facilities, *i.e.* transmission facilities running between a Verizon MA switch and a CLEC switch, do not fall within the scope of Section 251(c)(2), and Verizon MA has no obligation to provide such facilities to CLECs, and certainly no obligation to provide them at TELRIC rates. Section 251(c)(2) of the 1996 Act imposes upon ILECs the obligation "to provide *for the facilities and equipment of any requesting telecommunications carrier*, interconnection *with the local exchange carrier's network*, . . . at any technically feasible *point within the carrier's network* . . . ." (Emphasis supplied.) The statutory obligation requires the ILEC to enable CLECs to connect *their own facilities* to the ILEC's network, at a "point" *on the ILEC's network.* Section 251(c)(2) does not impose any obligation on ILECs to provide unbundled facilities for the purpose of interconnection, but requires that an ILEC provide a point or points on its network at which a CLEC may hand-off its exchange and exchange access traffic and the means for the CLEC's facilities to access that interconnection point. Thus, when defining the ILECs'

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[4] The Department, of course, does not have to address the interconnection issue further because the tariff provision Verizon MA proposed is entirely consistent with the Arbitration Order and is identical to the provision inserted into the Interconnection Agreement Amendment as agreed-to by the parties. If an issue should develop in the future regarding the rights and obligations of parties regarding interconnection under Section 251(c)(2), carriers with an interconnection agreement and those who purchase under the tariff will have the same right to have the matter resolved at the appropriate time by the Department.

interconnection obligation, the FCC identified six technically feasible "points" on their networks at which ILECs must enable CLECs to connect their facilities. Those are: (1) the line side of a local switch (for example, at the main distribution frame); (2) the trunk side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points; and (6) the points of access to unbundled elements. *Local Competition Order* ("LCO") at ¶ 212. As the FCC concluded, "the term 'interconnection' under section 251(c)(2) refers only to the *physical linking* of two networks for the mutual exchange of traffic" and does not include the "transport and termination" of traffic. *LCO* at ¶ 176. Thus the ILEC interconnection duty is to allow access for the CLEC to connect at these points, such as through the provision of collocation and Point of Termination ("POT") bays within the central office – not to unbundle office-to-office transport facilities like entrance facilities as if they were still UNEs. For its interconnect facilities, RCN can build its own, obtain them from a third party, or order a special access service from Verizon MA.

Verizon MA would also show, among other things, that RCN's theory that the Section 251(c)(2) interconnection obligation enables CLECs to lease at TELRIC rates the entrance facilities that the FCC has de-listed would render the FCC's rulings on those facilities meaningless. In the *TRRO*, the FCC held that "competing carriers are not impaired without access to entrance facilities connecting an incumbent LEC's network with a competing LEC's network *in any instance*." *See TRRO* at ¶ 5 (emphasis added); *TRRO* at ¶¶ 49, 66, 137-38, 141. According to RCN's theory, Verizon MA might not have to provide an entrance facility at TELRIC rates for purposes of unbundling, but it *would have to* provide the same facility at TELRIC rates for purposes of interconnection. Neither the *TRO* nor the *TRRO* contemplates such diametrically opposed results.

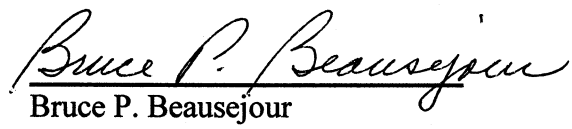
CONCLUSION

For the foregoing reasons, the Department should reconsider the finding in the Letter Order regarding entrance facilities and, upon reconsideration, vacate it. In doing so, the Department will not disturb any of its rulings in the Arbitration Order because the Department made no decision relating to interconnection facilities but expressly excluded consideration of such issues from the arbitration.

Respectfully submitted,

VERIZON MASSACHUSETTS

By its attorneys,



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